

## **Report of the Promotional Mission to the Republic of Zambia**

**14 – 18 April 2008**

### **Brief History**

1. The region currently occupied by the Republic of Zambia was for centuries occupied by Europeans and inhabited by indigenous hunter-gatherers. In the 15<sup>th</sup> Century it was invaded by Bantu-speaking Luba and Lunda tribes, immigrants coming from the north. These tribes were ruled by chiefs and monarchs. Occasional Portuguese explorers maintained contacts with the local chiefs through slave trade.
2. In 1855, a Scottish medical evangelist David Livingstone came to the region. He saw the magnificent waterfalls on the Zambezi River and named the falls after Queen Victoria. He thereby opened the area to the British Empire.
3. In 1888, Cecil Rhodes, spearheading British commercial and political interests in Central Africa obtained concession for mineral rights from the local chiefs. Later on, the British South Africa Company (BSAC) under Cecil Rhodes took over the administration of the region. In 1911, the region was named after him and became Northern Rhodesia and the bordering area in the south, Southern Rhodesia (now Zimbabwe).
4. The BSAC's mining venture failed and in order to raise revenue a hut tax was imposed on all post-pubescent males. Thousands of these men were sent into forced labour in the mines and others into the British armed forces during World War I. Accordingly, vast tracts of land was confiscated and handed over to White settlers. By 1909, approximately 1, 500 Europeans had settled in the region.
5. In 1924, the administration of Northern Rhodesia was transferred to the British Colonial Office as a Protectorate. In 1953, the colonisers joined both Rhodesia with Nyasaland (now Malawi) to form the Federation of Rhodesia and Nyasaland Black People continued to experience discrimination and ill-treatment under the Federation.
6. Less than a decade after, the anti-federation movements were transformed into a struggle for independence. In 1958, the United National Independence Party (UNIP) was created under the leadership of Mr. Kenneth Kaunda.

7. A two-stage election held in October to December 1962 resulted in nationalists' parties winning the majority in the legislative Council. Later on, the Council voted for the Secession of Northern Rhodesia from the Federation. On December 31, 1963, the Federation was dissolved. The first universal elections were organized and the UNIP won the elections making Mr. Kaunda Prime Minister.
8. On 24 October 1964, Northern Rhodesia became the Republic of Zambia. Kenneth Kaunda became President. Mr. Kenneth Kaunda's UNIP was defeated by Mr. Frederick Chiluba's Movement for Multiparty Democracy (MMD) in multiparty elections held in 1991. After ten years in power, Mr. Chiluba was succeeded by Mr. Levy Mwanawasa in 2001 who won a second term in 2006.

### **Geography**

9. Zambia is a landlocked country which borders the Democratic Republic of Congo (DRC) in the North West, Tanzania in the North East, Malawi and Mozambique in the East, Angola and Namibia in the West, Botswana and Zimbabwe in the South. Its area is approximately 752,614 sq km. The capital city is Lusaka. The main cities are Lusaka, Kitwe, Ndola, Livingstone and Kabwe. The terrain is composed of plateau and savanna. The climate is generally dry and temperate.

### **People**

10. The population of Zambia is approximately 12 million. Its annual growth rate was 1, 6% in 2006. It is made up of multiple small ethnic groups. Members of the Bantu ethnic group constitute the vast majority. The population growth rate has been slowed down by the HIV/AIDS epidemic which ravages the country. Almost 17% of Zambia is infected by the HIV pandemic. Life expectancy at birth is 37 years. The infant mortality rate is 102/1000. There is also a high concentration of Asians and expatriates, most of whom are British.
11. As far as literacy is concerned, 81.6% of men are educated to 60.6% of women. Most Zambians are subsistence farmers. The predominant religion is a blend of traditional beliefs and Christianity. Christianity is legally the official national religion. English is the official language.

## **Economy**

12. Zambia is one of the world poorest countries. About two-thirds of Zambians live in poverty. The country's economic growth rate cannot support the population growth. Per capita annual income is below what it was at independence. Zambia began to slide into poverty in the 70s when copper prices declined on the world market. In April 2005, Zambia was elected for the Heavily Indebted Poor Countries (HIPC) Initiative. Zambia reached the completion point and benefited from \$ 6 billion in debt relief. Zambia is now pursuing an economic diversification program to reduce the country's high reliance on copper.

## **Government**

13. Zambia became a republic when it attained independence in October 1964 and promulgated its first constitution the same year. The latter was replaced by the constitution of August 1973 which provided for a strong president and a unicameral national assembly making UNIP the sole legal party in Zambia. The said constitution stipulated that the sole candidate in elections for the office of president should be the person selected to be the president of the UNIP by the party's general conference. A new constitution was enacted in August 1991 due to pressure of demonstrations against the monopoly and the supremacy of UNIP in the political system.
14. The constitution of August 1991 enlarged the national assembly from 136 to 158 seats. It provided for an electoral commission and allowed for more parties to contest elections. This constitution was also amended in 1996 in order to set limits on the executive branch. The government has set up a National Constitution Council (NCC) composed of persons of all works of life to review the 1996 Constitution in a bid to strengthen democracy in the country.
15. The executive branch is composed of a president and a vice-president. The president is at the same time head of state and of government. The vice-president is appointed by the president.
16. The legislative branch consists of a unicameral National Assembly with 158 seats. 150 Members are elected by popular vote, 8 are appointed by the president for a 5 year term.

17. The judicial branch comprises the Supreme Court, the High Court, Magistrate's Courts and Local Customary Courts. The Supreme Court is the highest court and the final court of appeal. It has jurisdiction to hear constitution matters. The High Court has unlimited jurisdiction to hear civil and criminal cases to the exception of proceedings under the jurisdiction of the Industrial Relations Court established by the Industrial Relations Act. The Chief justices and judges of the Supreme Court are appointed by the president subject to ratification by the national assembly.

### **International human rights obligations**

18. Zambia has ratified a number of international and regional human rights treaties. At the global level, it has ratified or acceded to the following treaties:

- The International Covenant on Civil and Political Rights (ICCPR), accession 10 April.1984;
- The First Optional Protocol to the ICCPR, accession 10 April1984;
- International Covenant on Economic, Social and Cultural Rights (ICESCR), accession 10 April.1984;
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 21 June.1985;
- Convention on the Rights of the Child (CRC), 6 December 1991;
- International Convention on the Elimination of All Forms of Racial Discrimination,4 February 1972;
- Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment, accession 7 October 1998;
- Convention relating to the Status of Refugees (1951)
- Protocol relating to the Status of Refugees (1967)
- Convention relating to the Status of Stateless Persons (1954)
- Rome Status of the International Criminal Court.

19. At the regional level, it has ratified among others, the following treaties:

- African Charter on Human and Peoples' Rights (1981), 1 October.1984;
- Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

## **Relations with the African human rights system**

20. The Republic of Zambia is a state party to the African Charter on Human and Peoples' Rights which it ratified on 1 October 1984. Zambia submitted its Initial Report to the African Commission in 2006, combining all overdue reports since 1986. The said report was considered in May 2007 by the Commission at its 41<sup>st</sup> Ordinary Session held in Accra, Ghana.
21. The Commission undertook a promotional mission to Zambia from 9 - 13 September 2002.<sup>1</sup> The report of the mission was adopted at the 33<sup>rd</sup> Ordinary Session of the African Commission. The report raised, *inter alia*, the following issues impeding the effective enjoyment of human rights in Zambia:
- the serious problem of congestion/overcrowding in prisons;
  - the problem of backlog of cases in the judiciary;
  - the existence of certain customary laws that go against the spirit of the African Charter; and
  - the violation of human rights by the police force.

## **Terms of Reference of the Mission**

22. The objectives or terms of reference of the mission are as follows -:
- To promote the African Charter, exchange views and share experiences with major human rights stakeholders in the country on how to enhance the enjoyment on human rights in the country;
  - To make a follow-up on the recommendations made to the Republic of Zambia in the Report of the Promotion Mission undertaken to the country from 9 – 13 September 2002;
  - To raise awareness of and visibility of the African Commission and among the relevant government departments and institutions, as well as among civil society organisations;
  - To encourage closer collaboration between the African Commission and the State on the one hand, and between the African Commission and civil society organisations on the other.

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<sup>1</sup> The mission was led by Commissioner Andrew Ranganayi Chigovera, assisted by Ms. Fiona Adolu, Legal Officer from the Secretariat of the African Commission.

## **Meetings held during the Mission**

### **Courtesy visit on the Ministry of Foreign Affairs**

23. The Mission began on 14 April 2008 with a courtesy visit to the Ministry of Foreign Affairs of the Republic of Zambia. The delegation of the African Commission comprising Commissioner Pansy Tlakula, member of the African Commission and Special Rapporteur on Freedom of Expression and Access to Information in Africa, Head of Delegation, and Dr. Robert W Eno, Senior Legal Officer (Protection) at the Secretariat of the African Commission was received by the Permanent Secretary (PS) of the Ministry of Foreign Affairs, Mr. Tens Chipomba.
24. Commissioner Tlakula thanked the PS and the government of the Republic of Zambia for having accepted the African Commission's request to undertake another promotional mission to the country. She informed the PS of the purpose of the mission, noting that it was not a fact-finding mission, but rather a 'friendly mission' to meet and share ideas with relevant human rights stakeholders in the country – looking in particular, at the successes, achievements made, as well as the challenges encountered in the promotion and protection of human rights, in particular, the rights guaranteed in the African Charter.
25. Commissioner Tlakula further informed the PS that the mission was a follow up to the African Commission's promotional mission undertaken in September 2002, and came barely a year after Zambia presented its Initial Report to the African Commission in accordance with Article 62 of the African Charter.
26. The Commissioner further briefed the PS on the individuals, institutions and places the delegation would be meeting and visiting, and finally informed the PS of the procedure the African Commission would take to adopt and publish the report of the mission.
27. On his part, the PS indicated that the government of Zambia holds the African Commission in very high esteem. He said the African Commission was established to serve as a watchdog to ensure that African States play their part in the respect of human rights. He concluded by stating that the government will be anxiously waiting for the Commission's report and was committed to implementing whatever recommendations that the Commission would make.

## **Meeting with the Police Public Complaints Authority (PPCA)**

28. The delegation met with the Executive Secretary of the Police Public Complaints Authority (PPCA), Mrs. Dorothy Jolezya Zimba, on 14 April 2008. Commissioner Tlakula informed Mrs. Zimba of the purpose of the mission and explained the mandate of the African Commission. Commissioner Tlakula informed Mrs. Zimba that the police was an important institution in the promotion and protection of human rights, and the PPCA being a police oversight body, also had a very important role to play in the protection of human rights in the country.
29. The Commissioner indicated that the African Commission would like to know the mandate of the PPCA and how it discharges this mandate, including in particular, the challenges and difficulties it faced in the discharge of its mandate.
30. Mrs. Zimba informed the delegation that the PPCA was established in terms of the Police Act of 1999. However, due to financial constraints, it only started operations in 2002.
31. She said the Authority was composed of five members, a Chairperson and four members.<sup>2</sup> All the members of the Authority worked part-time while the Executive Secretary and the other staff members worked full time, although, they were all seconded from other government departments. The staff members included a driver, a cleaner, a typist, a clerk and a data analyst. There were no lawyers or researchers, meaning investigations were conducted by the members themselves.
32. The members of the PPCA were appointed by the Minister of Home Affairs from a list of persons compiled by the Permanent Secretary of Home Affairs. There were no stated procedures to be followed in the compilation of the list and appointment of the members. The members were appointed for a period of three years for an unlimited term. They can be dismissed by the Minister for not attending meetings.
33. She indicated that when the institution was established, there was a lot of apprehension, especially from the police. She said some sectors of the police did not welcome the establishment of the Authority, and questioned why there should be an oversight body for the police and not for other institutions of the state such as, the Military and the National Service.

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<sup>2</sup> The current membership had four men and a woman.

34. She said as a result of this attitude, there was mistrust and the police was suspicious of the PPCA, leading to lack of effective cooperation from the police. She cited an instance where the PPCA recommended that five police officers be dismissed for abuse of office, but the Inspector General of Police did not want to dismiss them. The President of the Republic had to intervene for the officers to be dismissed.
35. The dismissed officers took their case to the High Court for review, and the High Court held that their dismissal was unlawful. According to Mrs. Zimba, the Court held that two of the officers had already been tried and fined for the same offence by an internal police tribunal, and dismissing them would be tantamount to double jeopardy. The Court further held that the PPCA did not have the competence to dismiss police officers.
36. She said the PPCA appealed the decision of the High Court to the Supreme Court. The matter was still pending in the Supreme Court and the PPCA was represented by lawyers from the Ministry of Justice. She said because the PPCA did not have its own lawyers, it has to rely on the lawyers from Ministry of Justice.
37. Mrs. Zimba said the PPCA hasn't had any significant impact on the police as there were still several reports of unlawful detention, police brutality and police abuse of office. She added that while the main challenge may come from the police itself, the Police Act establishing the PPCA was also defective. She said the Act requires the PPCA to recommend to the Inspector General of Police (IG) to dismiss police officers who have committed a misconduct, however, in terms of the law, the IG did not have the powers to dismiss police officers. Only the Police and Prisons Commission (PPC) has the power by law to dismiss police officers.
38. The PPC Commissioners are appointed by the President of the Republic while the members of the PPCA were appointed by the Minister of Home Affairs. She said the PPC Commissioners claim that they cannot receive orders or implement recommendations emanating from the PPCA to dismiss police officers because they are appointed by the President and are accountable to the latter.
39. Mrs. Zimba also noted that apart from the procedural and legal challenges, there were also functional challenges. She said the Authority apart from being acutely understaffed, was also suffering from inadequate financial resources. She said the annual budget of the Authority for 2008 was One Billion Zambian Kwacha (about \$285,714 at an exchange rate of \$1 = ZK3,500 as at the time of the visit).

40. Asked by Commissioner Tlakula whether, given the numerous challenges the Authority was facing in the execution of its mandate it was still worth having the institution, Mrs. Zimba indicated that in spite all the challenges, the institution has been able to make some contribution. She said there were plans to recruit more staff and increase the budget of the Authority.

### **Meeting with the Jesuit Centre for Theological Reflection - JCTR**

41. The delegation met with the JCTR on 14 April 2008 at the premises of the latter. The delegation was received by the Director of the Centre, Dr. Peter Henriot accompanied by two of his colleagues.

42. After explaining the purpose of the mission and the mandate of the Commission, Commissioner Tlakula informed the Director that it was important for the African Commission to meet with faith-based institutions during its promotional mission so as to get a balanced and varied opinion regarding the human rights situation of a country.

43. In his response, Dr. Henriot welcomed the delegation and indicated that the JCTR was a Civil Society Organisation (CSO) as well as a Faith Based Organisation (FBO), that the Centre was a Catholic group established to undertake research on a variety of issues, including micro-economic developments, HIV/AIDS, Justice, democracy and good governance. Apart from research, the Centre engages in education and publication of materials, as well as advocacy on a variety of issues, including debt cancellation and respect for human rights.

44. Dr. Henriot informed the delegation that the Centre, which has been in existence since 1988 (twenty years) had a staff compliment of twelve and worked very closely with NGOs. That the Centre served as a resource centre for the Zambian Council of Churches (ZCC), a group composed of different churches.

45. According to Dr. Henriot many people in Zambia were very poor and there was a problem of gender inequality and underdevelopment. He said the solution to these issues was a bill of rights capable of addressing them. He said the Centre had prepared a report which used the South African bill of rights as an example to demonstrate that economic and social rights can be justiciable, and to find out whether, within the Zambian context, people could have *locus standi*, to claim these rights in Court.

46. He said even though the current Zambian Constitution provides for civil and political rights in the bill of rights, there were still serious human rights abuses taking place, in particular, the right to fair trial and the rights of women and children, the rights of prisoners, whom he claimed lived under inhumane conditions, as well as allegations of torture and police brutality.

47. He informed the delegation that the focus of his Centre was to ensure respect for all human rights, and in particular, to ensure that economic and social rights are included in the bill of rights. He said the Centre was engaged in educational campaign on the matter both in the electronic and the print media, and it was also engaged in a signature campaign to get economic and social rights included in the bill of rights.
48. He said the main areas where human rights were violated on a large scale included the education and health sectors, as well as in prisons.
49. On education, he indicated that the quality of education in the country had declined. According to him, this was due in part to the introduction of Community Schools, which he claimed had teachers who weren't properly trained and had schools that were overcrowded. He said education used to be free, however when the Structural Adjustment Programmes (SAPS) were introduced, fees were imposed and this led to a decline in the number of enrolment as well as a decline in the quality of education. He said, in principle, there was still 'free education' at the basic level, which according to him was not 'very free' in view of the fact that learners were required to buy books and other school needs.
50. On health, Dr. Henriot indicated that the main health problem related to HIV/AIDS. He said while the government had made great strides in providing Anti-Retroviral Drugs (ARVs) to HIV patients, it had still fallen short of meeting its own target. The government provides ARVs to about 100,000 people out of about 300,000 who need the drugs. He said there were free ARVs for those who could not afford, and the drugs were sold to teachers and other civil servants at subsidized rates of about 40,000 Zambian Kwacha.
51. On prisons, he indicated that the prison conditions were generally very bad, that prisons were overcrowded and prisoners stay in detention for years without trial.
52. Dr. Henriot further noted that Zambia was a party to several important international human rights treaties, but that the country didn't seem to take its human rights obligations seriously, including the fact that none of the instruments had been domesticated. He said meeting its human rights obligations was essential to national development and making economic and social rights justiciable would encourage government to realize those rights and meet its Millennium Development Goals (MDGs) targets.
53. He said there seemed to be a misunderstanding within government circles regarding the concept of justiciability of economic and social rights, adding that the government seemed to be scared that it would be overwhelmed

with claims/petitions from citizens seeking to exercise their economic and social rights.

54. On the death penalty, he said that there had been no execution of prisoners on death row since 1996 and that there were about 225 inmates on death row. He said even though the death penalty was still in the statute books, the current President, Levy Mwanawasa, (now late) had indicated that he would not sign any execution.

**Meeting with the Acting Deputy Chief Immigration Officer – Administration.**

55. The delegation met with authorities of the Zambian Immigration Service on 14 April 2008. The Immigration Department was represented by Acting Deputy Chief Immigration Officer – Administration, Mr. AS Phiri, accompanied by five other immigration officers.
56. After explaining the mandate of the Commission and the purpose of the mission, Commissioner Tlakula indicated to the immigration officers that the delegation decided to meet with the Immigration Department because the African Commission wanted to find out, among other things, the successes and challenges the Zambian Immigration Service have made or encountered in the execution of its mandate, especially in particular, in relation to the treatment of refugees and the numerous documented and undocumented migrants that come into the country.
57. In response, the delegation was informed that the immigration department comes into the human rights domain in relation to persons that have been detained and do not want to disclose their nationalities or do not have proper documents to ascertain their nationalities, or do not have money to leave the country.
58. The delegation was informed that the torture of prohibited immigrants or undocumented migrants was a thing of the past. That during the state of emergency, that is, before 1991, torture was widely reported. That currently there were refugees from Rwanda, the DRC, Burundi, and Angola.
59. Asked what would happen if an undocumented migrant refused to disclose their identity, Mr. Phiri indicated that the Immigration Officers know who the migrants are and where they come from just by looking at them or listening to them when they speak. He added that Zimbabweans were not a problem as they usually had documents with them. He said the problem was with the 'West Africans'. He said there were about 300 illegal immigrants across the country.

60. On the manner of repatriation, he said those arrested in the regions were regularly sent back to their countries of origin, as there was no transit centre in the country where illegal immigrants could be kept pending deportation. They are sometimes kept in prison as remandees. Minors are however not kept in prison but rather sent to welfare centres or Child care homes. He said the cost of keeping illegal immigrants was very high (spend about \$8,100 a month on deportation), that is why deportations take place almost immediately. He said to further reduce cost, deportations are done in a group because a plane is chartered to carry the illegal immigrants to their different countries.
61. He said in terms of Zambian law, a deportation is effected at the instance of the Minister of Home Affairs when a non citizen has committed an offence or when he/she is found to be a threat to national security. He said the Minister's deportation order is not final as it can be challenge in the High Court. He cited the case of Roy Clarke who challenged his deportation and won. He added however that, in terms of the law, anyone who is deemed to be a prohibited immigrant or illegal immigrant could be asked to leave the country without necessarily going to court. He said an immigration officer may serve an illegal immigrant with a notice to leave the country (FORM 15), stating when he/she should leave the country. He added that before a deportation is effected, the Embassies of the nationals concerned are informed.
62. Asked of the circumstances that led to the massive expulsion of West African nationals in 1992, that resulted in the submission of **Communication 71/1992 – RHADDHO/Zambia**, Mr. Phiri indicated that most of the West Africans who were deported were staying in the country illegally adding that some were criminals He said contrary to the perception that was given to the international community and the African Commission, most of them were taken to court, some were tried and fined. He said the perception that West Africans were targeted may have arisen because of the large number of persons and because they were from a particular region.
63. On the status of refugees in the country, he said there was less than 1000 refugees in the country and some of them are in refugee camps. He said the camps are secured and all the security wings of the State, including the police and the army are there to provide the best protection. He said some of the refugees were given land and some were engaged in businesses. Schools and other basic facilities are also provided in the camps.

## **Meeting with the Human Rights Commission (HRC)**

64. The delegation met with the Chairperson of the Human Rights Commission, together with the Executive Secretary of the Commission on 14 April 2008.
65. The Human Rights Commission was established in 1996 through an Act of Parliament. It is composed of seven members (two female and five males) who serve on part time basis. The Commission has established provincial offices in four provinces out of nine.
66. The members are appointed by the President subject to ratification by Parliament. The names of the members are forwarded to the President by various interest groups. There is no advertisement to invite the public for nominations.
67. The persons appointed by the President go through a Parliamentary Committee which scrutinizes their appointment and interviews them. If the Committee is satisfied with a candidate, the appointment is ratified. The Parliamentary Committee process is not opened to the public.
68. The shortcoming with the Parliamentary Committee is that the President does not give them a list of candidates to choose from. He sends only the names of the seven candidates he intends to appoint.
69. In terms of the Act, the Chairperson and Vice-Chairperson must be lawyers who have been practicing for more than ten years and are eligible to be appointed to high judicial office.
70. The challenges facing the Commission include inadequate human and financial resources in spite of its very wide mandate. The Commission was operating at 36% capacity due to lack of staff, and some key departments such as research, investigations and legal were operating with very little capacity. The Commission has an approved staff capacity of 131 but only about 47 have been recruited
71. The delegation was informed that there has been some improvement over the past few years as more donors were supporting the Commission. However, the donors were funding only projects and equipping offices in the provinces.
72. On independence, the delegation was informed that the Commission is a Constitutional body and its independence is guaranteed in the Constitution. According to the Chairperson of the Commission, the HRC is fairly independent as there was no interference with its activities. She said,

there might however be difficulties with its financial independence because its budget is determined by the Minister of Finance. The budget of the Commission might thus be determined by the government priorities and in some months, the HRC may not be given any allocation due to other government priorities.<sup>3</sup> For the 2008 financial year, the Commission had a budget of 7.5 Billion Kwacha (that is, \$2,142,857 at an exchange rate of \$1 = ZK3500 as at the time of the visit ). It is allowed to recruit its own staff.

73. The HRC reports to the President and to Parliament. The report is sent to the President who must ensure that within 14 days it is tabled before Parliament. The HRC is not invited by Parliament to defend the report. The HRC can only make recommendations and cannot take a matter to court.
74. The Commission is required to meet on a quarterly basis, however, it can meet when a need arises. It also meets on a monthly basis to review cases.
75. The Chairperson indicated that there were plans to guarantee financial independence for the HRC in the new constitution and enhance the powers of the Commission as well. She said the Commission takes part in the preparation and presentation of Zambia's State Reports.
76. The Commission indicated that it has received over 100 complaints since it was established. It noted further that it has not been able to measure the extent of its successes, but it can conclude that there has been greater awareness about the Commission in view of the increasing number of complaints received. Most of the complaints relate to economic and social rights, (unfair dismissals, unpaid dues, etc) which form about 60%.
77. She concluded by requesting the African Commission to sensitise National Human Rights Commissions in Africa on how they can meaningfully engage with the ACHPR.

### **Meeting with the Electoral Commission of Zambia**

78. The delegation met with officials of the Electoral Commission of Zambia (ECZ) on 14 April 2008 at the premises of the Commission. After explaining the mandate of the African Commission, Commissioner Tlakula indicated the purpose of the mission, and informed the officials that the African Commission would like to know among other things, the mandate

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<sup>3</sup> The Commission is not given a yearly budget, rather a monthly budget is disbursed to it based on the resources available in the government treasury. That is why it may be possible that in a month where the government purse is dry or there are 'other urgent priorities', the HRC may not be given its monthly allocation. It should be noted that this goes for all government institutions.

of the ECZ, and the success and challenges it faces in the discharge of its mandate. Commissioner Tlakula also indicated that the Commission was particularly interested in knowing the extent to which the work of the ECZ contributes to the promotion and protection of human rights, in particular the right to vote and to participate in government guaranteed under the African Charter.

79. In response, the IEC, represented by Mrs. Grace Mulapesi and two other members of staff informed the delegation that the ECZ was established in 1996, and it is provided for in the Constitution. The five members (the Chairperson and four others) were appointed in terms of an Act of Parliament. The Chairperson has to be a judge of the High Court or Supreme Court or a person qualified for appointment into high judicial office. The members are appointed by the President and confirmed by Parliament. The members work full-time. Out of the five required by the Act, only three had been appointed at the time of the mission.
80. There is a Select Committee in Parliament that scrutinizes members that are nominated by the President. The Select Committee can contact different stakeholders to get additional information on the candidates.
81. The delegation was informed that there was a proposed law that seeks to establish a Standing Committee that will be responsible for the selection of a number of names to forward to the President from where he/she will choose the members.
82. The members served for a period not exceeding seven years. They are given a three year term renewable. They prepare their own conditions of service and send them to the President for approval.
83. The Secretariat of the Commission is determined by the Commission and employed by the Commission and does not form part of the Public Service.
84. The Commission is funded by the Ministry of Finance. Like most other institutions, the budget is disbursed on a monthly basis. According to Mrs. Mulapesi this prevents the Commission from making long term plans because at times, the monthly appropriation is not even disbursed.
85. She also indicated that some stakeholders are of the view that because the ZEC receives funding from the government this may impair its independence. She indicated that she saw nothing wrong with the arrangement. She said the political parties were also concerned about the method of appointment of the members.

86. The annual budget for the financial year 2008 was 30 billion Zambian Kwacha. This is approximately \$8,571,428. She said the Commission needs at least 100 billion Kwacha (about \$28,571,428) to operate effectively in a non-election year. The Commission is engaged in activities such as bye-elections, review of strategic plan, post-election reviews, review of electoral legislation and post-election audit. The Commission was also called upon to conduct elections for other bodies.
87. The Commission has a staff strength of 110. There are no provincial offices and during elections, the Commission relies on the services of the Town Clerks. The delegation was informed that there was a decentralization plan to establish offices at District levels.
88. The Commission usually received complaints from opposition parties alleging impartiality by the Public Media. The Commission has established an Inter-Party Committee where all registered Political Parties take part and issues of concern are dealt with. She said there has been some improvement with respect to allegations of partial coverage by the print media but the electronic media was still a problem.

#### **Meeting with Women and Law in Southern Africa - WILSA**

89. The delegation met with the Regional Director of WILSA, Ms. Matrime Bhuku Choulu on 15 April 2008.
90. Commissioner Tlakula explained the establishment and mandate of the Commission as well as indicated the purpose of the mission. She informed Ms. Choulu that as one of the main NGOs working in the field of human rights in the country, the African Commission would like to know what WILSA does, the challenges it was facing, the situation of the rights of women in the country and the human rights situation in the country as a whole.
91. On her part, Ms. Choulu informed the delegation that WILSA was established to promote the rights of women, and her office was responsible for seven countries in Southern Africa.
92. She said generally, there were improvements in the promotion and protection of human rights in the country adding that the government had ratified several international human rights instruments, including instruments protecting the rights of women, such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Protocol to the African Charter on the Rights of Women in Africa and the SADC Declaration on Gender. She said the Criminal Code had very stiff penalties for domestic violence.

93. She said there was a Ministry for Gender and a Victims Support Unit had been established at Police Stations to assist victims of domestic violence, and there was also the establishment of a one-off stop Centre to provide help for victims of sexual violence.
94. These developments notwithstanding, Ms Choulu indicated that a lot still had to be done as there was an increase in violence against women and young girls across the country. She said there were no specialized courts in which these cases could be expeditiously dealt with. There was thus a backlog of cases which result in these cases taking long to be disposed of and in some cases, evidence being lost or tampered with. She added that the government does not have a proper mechanism to ensure the effective promotion of human rights in the country.
95. Regarding the behaviour of the police, she indicated that there was at times highhandedness in the way policemen dealt with suspects. She said there were reports of torture and unlawful detention, as well as police abuse of power. She cited the case of a certain lady who died in police custody, where the police claimed she committed suicide, but WILSA believes she was beaten to death. Ms Choulu said WILSA was pushing for an inquest to determine the cause of death. She said there were also allegations of women being raped in detention. She said some of these allegations have been filed with the PPCA but not much has been done by the latter.
96. She said WILSA was involved in a lot of research on the rights of women, including research on the family, HIV/AIDS, inheritance law, maintenance, trafficking in women and general legal reform. She said WILSA was lobbying Southern African countries not to accept the International Football Federation's (FIFA) demand to legalise prostitution during the FIFA 2010 World Cup tournament in South Africa, as according to Ms Choulu, this would encourage female trafficking.

### **Meeting With the Judicial Complaints Authority (JCA)**

97. The delegation met with the Judicial Complaints Authority (JCA) on 15 April 2008 at the premises of the Authority. The latter was represented at the meeting by its Vice President, Mr Ali Hamir and another member, Mr. John Manakatwe.
98. The delegation was informed that the JCA was established in 1999 by a Judicial Code of Conduct enacted by Parliament. It is composed of five members, four men and one woman. The members must be eligible for appointment to high judicial office. The members serve on a part-time basis and meet as and when necessary, usually twice a month, to deal with complaints.

99. The Authority is funded from the Ministry of Finance and the budget for 2008 stood at 1.2 Billion Kwacha (that is about \$ 342,857). The Authority manages its own funds and has recruited a full-time Executive Secretary, as well as a full-time Lawyer and an Accountant. According to Mr. Hamir, the Authority is completely independent.
100. The JCA is mandated to receive complaints against the judiciary or judicial officers. The complaints may range from not being satisfied with a judgment to allegations of misconduct, corruption and delays in rendering decisions.
101. Mr. Hamir indicated that when rights are violated, the court is the first place people go to, and as such it is important that courts and judicial officers are seen to be acting in a proper manner to retain the confidence of the public. He said this is why the Authority was established. He said a Code of Conduct had already been established for the legislature and people said a similar structure was necessary for the judiciary – to serve as a watchdog.
102. The Authority is mandated to investigate all allegations made against judicial officers and it has the competence to call upon the judicial officer complained against to explain or answer the allegations made against him/her. The Authority also has the power to compel witnesses to appear before it, to produce documents, etc.
103. When a complaint is lodged with the Authority, it is investigated, and after the investigations, the JCA produces a report of its findings. If the allegation was brought against a Magistrate, the report will be submitted to the *Registrar of the High Court*. If the allegations were against a judicial officer, the report is submitted to the *Chief Justice of the Republic of Zambia*.
104. If the recommendation of the JCA is for the removal of a Judicial Officer the normal constitutional procedure for the removal of an officer would be followed. In case the allegation is against the Chief Justice, the report of the JCA is submitted to the President of the Republic.
105. If the complaint does not have merits, the complainant (s) is/are notified and the matter is closed.
106. Since its established, the JCA has received about thirty (30) complaints, some had no merits while some had *prima facie* cases of abuse of power.

107. Asked whether the officers complained against are required to appear before the Authority, Mr. Hamir indicated that complaints are made in writing and they come from all over the country. When a complaint is received, the Authority examines it to determine whether it has merit. When it is established that there is merit in a complaint, the officer is informed and given an opportunity to present his/her side of the story. If the officer concedes to the allegations, the Authority makes a recommendation without hearing the complainant or any other party.
108. He said there have however been cases where both the officer and the complainant have appeared before the Authority with their legal counsels and witnesses. After listening to both sides, the Authority makes its findings and recommendations. The Authority has in some cases traveled to the provinces to hear parties, and where the parties are required to appear before the Authority, the latter covers the cost.
109. Mr. Hamir indicated that most recommendations of the Authority have largely been implemented. The body or officer to whom the recommendations are directed is obliged to write to the Authority to acknowledge receipt of the recommendations and indicate measures taken to ensure implementation. He said the JCA has not made any recommendation for the removal of a judge.
110. Asked whether the JCA gets the full cooperation from the judges, given the fact that the members of the JCA are not all judges, Mr. Hamir indicated that the judicial officers do not deal with individual members of the Authority, but rather with the Authority as a body. He added that the JCA has the full support of the legislature. He said that a judicial officer who is aware that another judicial officer has violated the Code has an obligation to report the latter, otherwise, he/she will be committing an offence.
111. The delegation was informed that the Authority has visited all the provinces to explain its mandate to the general public.

### **Meeting with the Ministry of Sport and Child Development**

112. The delegation met with authorities from the Ministry of Sport and Child Development. The Ministry was represented by the Directors of Sport and that of Child Development, Messrs. John Zulu and Clarkson Chipamba, respectively.
113. After describing the establishment and mandate of the African Commission, Commissioner Tlakula explained the purpose of the Mission. She indicated that the Commission was interested in knowing the

mandate of the Ministry and what it was doing to promote and protect the rights of children, especially in light of reports of increasing rate of sexual offences and violence against children, including child trafficking. She said the Commission would like to know the successes that the government of Zambia has made in these areas, as well as the challenges, if any, and how the Ministry was dealing with them.

114. In response, Mr. Zulu indicated that the Ministry of Sport and Child Development was one of the Ministries charged with the responsibility of protecting the rights of children, which includes developing a national child policy and following up on child development. He said the Ministry was also charged with ensuring that the National Child Policy is complied with by all stakeholders, including government departments as well as companies and NGOs.

### **Meeting with the Ministry of Gender – Gender in Development Division**

115. The delegation visited the Gender in Development Division of the Ministry of Gender. The delegation was received by the Director of the Gender in Development Division, Mr. Joe Kapembwa, Director of Economics and Finance Section of the Gender in Development Division (GID).
116. After introducing the African Commission, and the purpose of the mission, Commissioner Tlakula informed Mr. Kapembwa that the African Commission wanted to know the mandate of the Ministry of Gender, and in particular, the successes it has made in the promotion of human rights in general and the rights of women in particular. She said the Commission was also interested in the challenges faced by the Ministry as it tries to discharge its mandate and the measures it has put in place to deal with the challenges.
117. In his response, Mr. Kapembwa indicated that the mandate of the Ministry of Gender, and in particular the Gender in Development Division was to coordinate, monitor and evaluate the implementation of the Gender Policy. He said in terms of this policy, several programmes have been developed to promote gender equality in the country. These programmes included: capacity building, awareness creation, monitoring and evaluation, production of information and advocacy material.
118. The Division was also involved in the coordination of the gender-based violence partnership which involves UN agencies, NGOs and government departments. He said the Division was drafting a specific legislation dealing with gender-based violence. (The legislation had not yet

been given a name). Research and advocacy was still being done to improve on the legislation.

119. The Division was also coordinating a programme called Women, Girls and HIV/AIDS, in which it worked closely with NGOs and the National AIDS Council. It had funding from the UN and the government. The Division also had a capacity building programme.

120. The delegation was informed that Zambia had adopted its 5<sup>th</sup> National Development Plan in which gender had been mainstreamed. For the next four years, and within the Joint Gender Protection Sector, the Gender in Development Division will be concentrating on five main themes, namely:

- education and training;
- land and agriculture;
- labour and employment;
- health; and
- governance.

121. The Division will focus on review of legislation to ensure greater respect for equality and human rights. Mr. Joe Kapembwa indicated that the Division would like to work closely with the Ministry of Justice to ensure that issues of gender are considered in the conceptualization and formulation of all legislation.

122. She indicated that the issue of gender should not be left to each department; rather it should be the responsibility of all.

123. According to Mr. Kapembwa the problem was not lack of policies, but rather one of implementation of commitments made, as some government departments had still not been able to mainstream gender in development programmes. To deal with this challenge, he said the 5<sup>th</sup> National Development Plan had tasked each state department to develop a strategy for the operationalisation of the Gender Policy.

124. Mr. Kapembwa noted that even though Zambia has not domesticated CEDAW, the division was trying to see which provisions could be easily domesticated. To this end, a Committee on Human Rights, Constitutionalism and Democratisation was established to see how the international human rights obligations of the country could be fulfilled. The Committee is composed of civil society and other stakeholders. The Division also participated in drafting Zambia's State Reports submitted to treaty bodies.

125. Mr. Kapembwa informed the delegation that there was a Minister of Gender but there was no Ministry *per se*. The position was established just to have a political representation in cabinet to look after women affairs. The Gender in Development Division provided secretariat support to the Minister, who is a Minister in the Office of the President. The Gender in Development Division falls under Cabinet Office.
126. Asked whether having a Minister was helping to mainstream gender or to militate against it, Mr. Kapembwa indicated that the advantage with the Zambia position is that there was no full-fledged ministry. She said having a minister and a division allows the latter to act independently and not under any particular ministry.
127. She added that NGOs and civil society organizations were supportive of the arrangement. She said the Division does not support the establishment of a full-fledged ministry, but prefers the post of a minister as a political weapon to look after the affairs of women in cabinet. She said the gender focal points that were established in each ministry failed because they were junior officers and could not coordinate gender issues.

### **Meeting with the Ministry of Information and Communication**

128. The delegation visited the Ministry of Information and Communication. The delegation was received by the Assistant Director of Research and Public Relations, Mr. T. Banda, who was accompanied by the Assistant Director of Technical Services, Mr. Sam Lungu and the Public Relations Officer Mrs. Cecilia Banda.
129. After introducing the African Commission, and the purpose of the mission, Commissioner Tlakula indicated to the officials of the Ministry that the African Commission was interested to know the mandate of the Ministry, and in particular, the successes it has made in the promotion of the right to freedom of expression and access to information, as well as measures it has taken to incorporate the African Commission's Declaration of Principles on Freedom of Expression. She said the Commission was also interested to know the challenges faced by the Ministry as it tries to discharge its mandate and the measures it has put in place to deal with the challenges.
130. In his response, Mr. Banda indicated that as a country, Zambia has tried to ensure that people get information as much as possible. One medium used in this regard is the local language newspaper through which government policies are transmitted to the public. He said the local language papers are very cheap, K500, but people still cannot afford them. Government is considering to make the newspaper freely available. The private papers were expensive and hardly cover the whole country.

There were 36 community/commercial /religious radio stations that help to pass information to the people. About 22 privately owned newspapers were registered but only a few published regularly. There were four private Television stations and one public Television Station.

131. He said the Ministry was in charge of managing two print media – Times of Zambia and the Daily Mail. They are controlled in terms of policy by the ministry, but the Board of Directors determines the editorial policy. The content of what they publish is also determined by the Board. He said these papers are better referred to as state-supported rather than state-controlled because the government does not control the papers but simply supports them by helping them produce more for broader circulation.
132. He said, in actual fact, they do not have any monthly subvention from government. They employ their own workers and approach government for assistance only if they want to purchase equipment. He concluded that there was no press censorship.
133. Asked whether there were plans to transform the state broadcaster to a public service broadcaster, because if it is state-owned, it tends to concentrate on broadcasting news that favours the government, and this becomes problematic especially during elections, Mr. Banda indicated that the government has had that experience especially during elections, but that there has been a safeguard, especially during elections. He said the Electoral Act compels the Zambian National Broadcasting Corporation (ZNBC) to give equal time to all parties during elections. He noted that the ZNBC had monopoly for a long time that was dictated by the history of the country. That during the liberation war, there had to be serious control of the ZNBC, however, broadcasting has been liberalized and anyone who has money can establish a radio or TV station.
134. He said turning the ZNBC into a public broadcaster could be a bit difficult as this may mean they lose government support. He said maybe when the ZNBC gets to a level where it can stand on its own without government support, it can be made a public service broadcaster. He however noted that there were moves to make the ZNBC a public broadcaster through the Independent Broadcasting Authority (IBA) Act of 2002. The IBA seeks to regulate broadcasting in the country and will remove the issuing of licences from the Ministry of Communication. The Minister has the power to appoint the Board members of IBA. The members have to be ratified by parliament.
135. On the Freedom of Information legislation, the delegation was informed that there was a Freedom of Information Bill which was at consultative stage. Consultations were almost complete and the bill may be reintroduced in Parliament at its next sitting. The main issue pending its

submission to parliament was the question of security, especially following the war on terror. There was concern that if too much access to information were allowed, it may jeopardize the security of the state.

### **Meeting with the Legal Resources Foundation (LRF).**

136. The delegation met with the Legal Resources Foundation (LRF) at the premises of the latter. The Legal Resources Foundation was established in 1991 to promote and protect human rights in Zambia, through among other things, providing free legal assistance to victims of human rights violations.
137. The delegation was informed that most of the problems/complaints of human rights violations were against the police. This included torture, police brutality and abuse of power. According to the LRF, because the police do not have enough equipment and resources to investigate crime, they turn to unorthodox means to get confession from suspects. The delegation was informed that suspects in detention have been killed, maimed, and some raped just in a bid to extract confessions. The LRF alleged that it was denied access to information by the police when it was investigating the matter. It cited a case where a woman was raped and died in custody and it is said that other detainees had heard her screaming at night calling for help. When the LRF requested for a list of those who were detained in that cell the day the woman was detained, the police refused to give the list. The LRF also claimed that people on ARVs who are detained were denied access to their drugs by the police during the period of their detention.
138. The LRF recommended that the government should increase funding for police, increase their capacity and resources, to enable them investigate properly.
139. Asked what the role of the PPCA was in the face of police malpractices, the LRF indicated that the PPCA was a “toothless bulldog”. That the public has not seen any results from the PPCA.
140. Other human rights issues raised by the LRF included poor labour practices where foreign investors were alleged to be paying slave wages to local Zambians working under very poor conditions. People were wrongfully dismissed and terminal benefits were hardly paid. The LRF said foreign investors, especially the Chinese and Lebanese had very poor working relations and at times, force employees to do HIV tests.
141. The LRF recommended that the state should pass legislation to regulate labour relations, including the adoption of minimum wages and conditions of employment Act. It noted that there is legislation such as the

Employment Act and the Industrial Relations Act, but many people did not know about these laws and there was a problem of their enforcement. The LRF claimed the Labour Commissioner is supposed to visit business premises, but this was rarely done. That the labour laws do not make provision for occupational safety law requirements, e.g. protective clothing. That there were no laws to protect people living with HIV in the work place, including how they should be treated, as there were reported cases where people had been dismissed because of their HIV status.

142. The other challenge facing the LRF include the fact that some of the women who bring complaints to the organization often abandon these complaints before conclusion of the investigation. The LRF also claimed that it was difficult for women to access finance or own property in their name, especially women in rural areas who do not have ownership to land because land is customary property and owned by the chiefs.
143. Other human rights challenges highlighted by the LRF included the fact that prisoners/remandees/juveniles remain in detention for several years before their trials were completed, the immigration officers are failing to respect refugee identification and consider almost every foreigner as a prohibited immigrant. The LRF claimed the number of refugees in the country was far higher than the number given by the Immigration Department.
144. The LRF indicated that it had been able to get compensation and damages for victims of human rights violations, ranging from releases to financial awards. In 2007 it received a total of 1.4 million Kwacha in damages for clients and it's paralegal services project received another 1 billion kwacha in damages for clients. Through habeas corpus applications, it secured the release of several persons illegally detained by the police. The LRF also visits police cells, publishes a monthly newsletter and hosts the secretariat of the Southern African Legal Assistant Network (SALAN) which comprises 11 members.
145. The Foundation receives about 33,000 cases a year, a staff strength of 67 staff, including 12 lawyers and has offices in all the provinces.
146. The LRF its major challenge is inadequate resources adding that the legal aid department of government was supposed to help to share the burden but people are apprehensive to approach the government for legal aid. It noted further that even when it secures damages for clients it takes long for these monies to be paid and some clients even die before the money is paid.

## **Meeting with the Acting Dean of the Faculty of Law of the University of Zambia (UNZA)**

147. The delegation met with the Acting Dean of the School of Law of the University of Zambia (UNZA), Mrs. Lilian Mushota. After introducing the African Commission, and the purpose of the mission, Commissioner Tlakula indicated to Mrs. Mushota that the delegation of the African Commission was in the country to talk to various human rights stakeholders, interest groups and government officials to find out the conditions of promotion and protection of human rights in the country. She said the Commission was looking at the successes as well as the challenges faced by the different stakeholders as they seek to discharge their mandates.
148. In her response, Mrs. Mushota started by apologizing for the unavoidable absence of the Dean, Dr. Margaret Munalula. She indicated that Zambia had several laws, including the constitutions and many international instruments that it had ratified to protect human rights, but domestication of these instruments had been a problem. She said without domestication, the international human rights treaties ratified were mere aspirations. That the Zambian people do not feel the impact of the international instruments on their daily lives. She said nothing new had been put in place after the ratification of these instruments to ensure the enjoyment of human rights guaranteed therein.
149. She said the Law School sent a few students to the University of Pretoria to understudy the establishment of a law clinic. This was established in 2006 and was being managed by students under the supervision of a member of staff. That the school was working with the judiciary to see how the students in the law clinic can be of assistance to the judiciary.
150. Asked how the Law School assists the government in the promotion and protection of human rights and national development generally, Mrs. Mushota indicated that there was no concrete relationship between the government and the UNZA, except where government approached the University for research on a specific issue. She said the School however offered courses on human rights and students undertake research on human rights issues which contribute to law reform in the area of human rights.
151. She said the Law School was represented in the Constitution Review Commission by 3 members. She noted that the School is not consulted on law reform. However, individual staff members were consulted by the government to render services on law reform on an individual basis.

152. The School of law does not have a position on human rights issues and had no direct relationship with the Human Rights Commission. She informed the delegation that the School was organizing a colloquium from 28 – 30 April on the theme ‘ National Colloquium on the future of legal Education’ to bring together Zambians in the Diaspora to see how they can make contributions towards raising the profile of the school.

### **Meeting with the Anti-Corruption Commission (Deputy Director)**

153. The delegation met with the Deputy Director of the Anti-Corruption Commission (ACC), On 16 April 2008.

154. After introducing the African Commission and the purpose of the mission, Commissioner Tlakula indicated that the delegation wanted to know the mandate of the ACC, and in particular how its mandate contributed to the promotion and protection of human rights in the country, looking at the successes as well as the challenges it faced in the discharge of its mandate.

155. The Deputy Director indicated that the ACC had been in existence since 1982 and it was established to investigate and prosecute cases of corruption, prevent corruption and educate public on the effect of corruption in the country. She said in the performance of its duties the ACC was are expected to observe human rights.

156. The ACC was composed of five members, the Chairperson and Vice Chairperson plus 3 other members.<sup>4</sup> The members were identified by the Public Sector Commission and the names sent to the President, who appoints them, subject to ratification by the parliament. The ACC headed by a Director General who must be qualify to be judge of the High Court. She said some people have questioned the independence of the ACC since the members were appointed by the President. According to her the independence of the ACC is guaranteed in the Act establishing it.

157. She said when there was a case to be investigated, the Director General of the ACC will authorize investigation of the case by investigators of the ACC. If there is sufficient evidence, the matter will be referred to the Director of Public Prosecution (DPP) for consent to prosecute. When the DPP consents the ACC prosecutors go ahead and prosecute.

158. She said some segment of civil society has argued that to ensure complete independence of the ACC, consent to prosecute should not be

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<sup>4</sup> 2 women and 3 men.

sought from the DPP, rather the ACC should be able to make that determination.

159. The ACC investigates corruption in both the public and private sphere. Asked whether the ACC was succeeding, the Deputy Director indicated that it had recorded success well above 50%. She said people would want to judge the success rate of the ACC based on the number of convictions of high ranking officials, which according to her, people argue, the ACC had not done enough. She said the ACC has been able to bring a minister, provincial minister, Law Enforcement officers, etc to court and is strict on the principle that no one is above the law as far as corruption was concerned.
160. On the prevention of corruption, she said the Anti-Corruption Policy was adopted through a consultative process. She said in the private sector, the ACC has formed an alliance through the Zambia Business Forum, which is developing a code of Ethic for the private sector. She said prosecutions have also been done in the private sector such as in banking, constructions companies and suppliers.
161. Asked whether there was a high prevalence of corruption, she indicated that based of the Governance survey it conducted, the police, lands, immigrations, Zambia Revenue Authority (ZRA) and pensions sectors topped the list.
162. She indicated that the main challenge of the ACC was inadequate resources, including insufficient budget. She said she believes the government had done well in terms of equipping the ACC. The ACC also gets support from other partners. It has offices in all the provinces and has a staff strength at the time of the mission of 260, out of an approved capacity of 318. The ACC had a total of 16 lawyers at the time of the mission.

### **Meeting with the Legal Counsel of the National Assembly**

163. The delegation met with the Legal Counsel of the National Assembly, Mrs. Cecilia Mbewe, who was sitting in for the Speaker of the National Assembly who was reported to be out of the country for other official duties.
164. After informing Mrs. Mbewe about the African Commission and the purpose of the mission, Commissioner Tlakula indicated that as one of the arms of government, the African Commission wanted to know the role of the Zambian parliament in the promotion and protection of human rights in the country. She said the Commission was particularly interested to parliament's role in the ratification and domestication of international

human rights instruments, the adoption of legislation with bearing on human rights, the oversight role of parliament, etc.

165. In her response, Mrs. Mbewe indicated that parliament had very little to do with ratification and domestication of international human rights treaties. She said the process of domestication is normally initiated by the executive and discussed in parliament. She indicated that in the new constitution, the responsibility to initiate domestication will shift to parliament.
166. She however noted that even most of the instruments have not been domesticated, they are contained in the domestic laws of the country in one way or the other.
167. On parliamentary oversight role, she said there was a specific committee that monitored the executive to ensure that some of these instruments are implemented and domesticated. She said there was also the Committee on Legal Affairs, Governance and Constitutional matters that dealt with human rights issues.
168. When a report is submitted to parliament, it goes to the relevant committee that deals with it. On relation with the HRC, she indicated that the HRC may be invited if the committee feels that it is necessary to invite it, maybe to clarify something. She added however that the HRC did not need to wait for the committee to invite it, it can decide to attend parliament on its own.
169. Asked about progress on the Information Bill, Mrs. Mbewe noted that the bill should have been adopted already, save for the fact that government was yet to table it before parliament. She said once tabled, it could take between 2-3 weeks for it to be adopted.
170. She said another oversight role of parliament was with respect to the appointment of members holding Constitutional Offices. She said parliament ratified appointments made by the president and in doing so members of the public were invited to have a say. Parliament writes to all relevant organizations to help assess the suitability of each candidate, e.g, the Law Association of Zambia (LAZ), Transparency International, including other institutions and investigative wings like the ACC, to give information on candidates.
171. She said there have been situations where parliament had rejected certain candidates and the executive had to replace them. She said the only problem was that the President presented only the number of names required for the position. She said parliament would like to be involved in identifying candidates or to be given more names to choose from.

172. Asked why the process can't be more transparent to include nominations from public and/or advertisements, Mrs. Mbewe indicated that that would require a change in the constitutional.

### **Meeting with the National HIV/AIDS/STI/TB Council (NAC)**

173. The delegation met with the Director General of the National HIV/AIDS/STI/TB Council (NAC), Dr. Bu. Chirwa.

174. After informing Dr. Bu. Chirwa about the African Commission and the purpose of the mission, Commissioner Tlakula indicated that the African Commission wanted to know the mandate of the NAC, especially in relation to the promotion of human rights generally and the rights of persons infected and affected with HIV/AIDS. She said the Commission was also interested to know the successes the NAC had made as well as the challenges it was facing in the discharge of its mandate.

175. Dr. Bu. Chirwa informed the delegation that the NAC was a statutory body established by an Act of parliament in 2002. It is a Council composed of 15 members and a secretariat, established to coordinate a multi-sectoral response to HIV/AIDS.

176. He said in addition to the Council, the government established a Cabinet Committee composed of 8 cabinet ministers which direct policies. The Cabinet Committee reports to cabinet and to the President of the Republic. The 15 members of the Council are appointed by the Minister of health.

177. In terms of policies and strategies the Council lobbied to have developmental issues included into the 5<sup>th</sup> National Development Plan. HIV/AIDS was mainstreamed in all the sectors. The President has directed that all the departments have focal persons on HIV/AIDS. The Council has developed a strategic framework for 2006 – 2010 to guide national policies.

178. Most sectors/departments of government have developed sector policies derived from the National Policy and the 5<sup>th</sup> National Development Plan. The plan has a multi-sectoral response, human rights based programmes, gender sensitivity, greater involvement of people with HIV/AIDS and a decentralized response.

179. The Director indicated that the activities of the Council were linked to global regional and sub-regional initiatives (i.e. UN, African Union

- Decision in HIV/AIDS, etc). It subscribed to universal access, accelerate prevention programmes and decentralized response at local level.
180. The government is very sensitive to the human rights of HIV patients and HIV testing will not be the basis of employment. The government introduced free ARVs in 2005 to ensure access to treatment for persons with CD4 count of less than 200. The Director indicated that government intends to increase the criteria for free ARVs to CD4 count of 300. According to the Director, when patients start treatment on better CD4 count they respond better.
181. The government has also initiated routine testing of pregnant women with an 'opt out' policy. Those who are positive are treated. This has increased the number of women taking treatment and reduces number of children infected.
182. The HIV prevalence rate in general is 16%, 20% for pregnant women and the 15 – 49 sexually active age bracket. Generally, more women were affected than men. Since treatment started, there has been about 90% survival rate.
183. With respect to treatment for children, there was a diagnostic testing for children. In the past, the children would ask their mothers for permission to be tested. However, presently, when the doctor thinks a child should be tested, he or she may be tested (with a possibility of opting out). This has increased the number of children being treated from 1,000 to 15,000.
184. The Council works closely with the Ministry of Labour to create awareness and prevent discrimination of people living with HIV/AIDS in the work place. Most companies provide sensitization programmes and work place programmes that are linked to provision of assistance.
185. Asked whether ARVs were available country-wide and whether there were specific programmes for AIDS orphans, Dr. Chirwa indicated that there wasn't a country-wide distribution, but there was a public and private partnership to increase access to ARVs. He said the government targeted 300,000 people, and at the time of the mission, 150,000 were on ARVs and it was confident that it would meet that target by 2010. He said prisoners and refugees were also entitled to free ARVs treatment.
186. On the programmes available to support orphans, Dr. Chirwa indicated that the Council was working closely with the World Food Programme (WFP) and the World Health Organisation (WHO) to give AIDS and TB patients food supplements such as Soya beans, maize

meal, *capenta*, etc. Orphans and widows are identified and given food supplements.

187. Asked whether the provision of ARVs without proper nutrition to the poor did not affect their health negatively, Dr. Chirwa noted that it was a myth that administering ARVs without proper nutrition was dangerous, adding that, ARV improves appetite. He said it was not necessary to feed patients first before administering the treatment.
188. The Council had also instituted routine testing for women because in the past women refused to be tested before getting consent from their husbands. The Council has thus introduced a concept of *couple counseling* to encourage couples to test together.

### **Meeting with the Judiciary – Registrar**

189. On 17 April 2008 the delegation met with the Registrar of the High Court, Mrs. Mwamba Chanda, sitting in for the Chief Justice who, due to urgent commitments, could not meet the delegation.
190. After informing Mrs. Chanda about the African Commission and the purpose of the mission, Commissioner Tlakula indicated that as one of the arms of government, the African Commission wanted to know the role of the Zambian judiciary in the promotion and protection of human rights in the country. She said the Commission was particularly interested to know the judiciary's role in ensuring Zambians enjoy the full range of international human rights instruments that Zambia has ratified, through the use of international human rights treaties and jurisprudence by local courts. Commissioner Tlakula also wanted to know whether there were backlog of cases and how the judiciary interfaced with the JCA.
191. In her response, Mrs. Chanda indicated that the backlog of cases has always been a concern for the judiciary. He said the infrastructure for the courts was put up before independence. At that time, the population of Zambia was just over 1 million. The infrastructure has not changed much, even though the population has increased to about 11 million people. There has been no corresponding increase in the infrastructure development with the increase in population and the increase in crime.
192. She said there were High Courts in three provinces - Lusaka, Southern and Central provinces, and 2 in the Copper belt. In the other provinces, there were circuit courts. The judiciary has to mobilize resources for judges to travel to the circuit courts.
193. She said there was a programme funded by the Ministry of Justice/DANIDA on access to justice to try and deal with the backlog. This

- programme includes all the stakeholders that have a role in the criminal justice system. Police, prisons, judiciary, etc. There has been an increase in the human resources since independence, but this increase is not proportional to the increase in cases. The judiciary is still overwhelmed with the backlog.
194. The reasons for the backlog are manifold and cannot be attributed to the court only. Inadequate transport to bring suspects to court, delays in investigations, absence of witnesses etc also contribute to the delay in finalizing cases.
195. The judiciary had 44 judges – Supreme Court (9) and 35 High Court judges. In 2004/2005 the salary for members of the judiciary was quite low – 900,000 Kwacha per month for magistrate. Now, it depends on the rank of the officer. The amount for a new entrant, is 1.400 million kwacha and for the senior resident magistrate, is 7 million Kwacha.
196. Houses are provided for magistrates free of charge. Judges get housing allowances. There is also a provision for car a loan. Judges are appointed by the President. When there is a vacancy, the JSC liaises with LAZ and other bodies to ask members to apply. The JSC interviews receive applications and conducts. The appointment process is not open to the public. The JSC is governed by the Adjudicature Act. It is made up of the Attorney General, the Solicitor General, the Dean of the Law School, LAZ, a Supreme Court (SC) Judge, persons from the legal fraternity, one person appointed by the President. It is chaired by the Chief Justice (CJ) and the registrar is the secretary of JSC.
197. Asked why the process of appointment of judges was not opened to the public, Mrs. Chanda said she saw no reason why it should be open to the public, that the JSC does not delve into the character of the judge, but concentrates on the competence of the candidate to serve as a judge. The names are referred to the president based on how they performed in the interview. The President sends the names to parliament.
198. In parliament the candidates are further scrutinized and the public is consulted. The character of the candidates is at this stage scrutinized by consulting other bodies such as NGOs and intelligence institutions. There has been a situation where parliament has rejected a candidate due to character.
199. On the relationship with the JCA, she said the JCA's role is to work as a watchdog on the judiciary in terms of how matters are being handled. According to Mrs. Chanda, it has no powers to intervene in the decisions of the courts. However, it has the powers to intervene in cases where the process was not followed or where there was corruption. The JCA is

empowered to call the judicial officer to appear and give his/her side of the story.

200. If there was a complaint against a magistrate, the JCA reports to the registrar and the report is sent to the JSC which employs magistrates. If the report was against a judge, the JCA sends its report to the Chief Justice, and the CJ writes to the president who may constitute a tribunal to remove a judge.
201. She said there have been reports from the JCA to warn a judge. There has been no report to dismiss a judge. She added that there was also an internal process where complaints can still be brought to the registrar, who investigates and makes a recommendation to the JSC for considerations.
202. On the training of judges on human rights issues, she said there were occasional programmes for training magistrates and judges and there had been quite a number of workshops and seminars on various issues, including human rights and HIV/AIDS. She said donors have also been helping with training of judges.
203. Regarding reference to international human rights instruments by courts in their judgment, she said international instruments have not been domesticated but this did not mean they cannot be used. She said there had been workshops on how judges could be innovative and how they can use international human rights treaties in court, adding that a lot of judges have made use of these instruments even though they have not been domesticated.

#### **Meeting with the Non-Governmental Organisation – Coordinating Committee (NGO – CC)**

204. The delegation met with the Non-Governmental Organisation – Coordinating Committee (NGO – CC) on 17 April 2008. The NGO – CC was represented by seven NGOs.
205. After informing the NGOs about the African Commission and the purpose of the mission, Commissioner Tlakula indicated that the African Commission wanted to meet with them to discuss among other things, the human rights situation in Zambia, the work of the NGO-CC in the promotion of human rights in general and the promotion and protection of the rights of women in particular.
206. The delegation was informed that the NGO-CC is an organization concerned with coordination of human rights and gender in general. The organization is a coalition/network of NGOs dealing with the promotion of

- the rights of women. Issues dealt with include gender – based violence, putting women in decision-making and corporate levels.
207. The network draws most of the progress from the Beijing Platform for Action. The Commission was informed that Zambia operates a dual legal system where statutory and customary law is recognized.
208. With respect to the protection of the rights of women, the delegation was informed that there was a sexual and gender based unit established with the help of the EU, as well as a centre at each police station to assist women that are victims of violence. The Centre also offers counseling to women and children. There was also a youth programme to empower the youths and a programme on economic empowerment for women, offering training for women.
209. A unit has also been introduced called the Men’s Network, through which the community is sensitized on gender-based violence. The delegation was further informed that there was a lot of networking by women organizations to take cases to court.
210. According to the NGO-CC, the legal system as it stands at the moment does not address a lot of issues on women. The organization cited the numerous cases related to property grabbing and administration of estates. It said the NGOs had been advocating for a bill/law on Domestic Violence for almost 5 years and nothing has been done. It said a lot of work has been done by civil society to kick-start the process. But the process has been slow.
211. The delegation was informed that the government has appointed a committee on gender-based violence laws – to see how to harmonise the laws with international instruments (being done by the Law Development Commission).
212. On women representation in politics, the delegation was informed that 107 women contested parliamentary elections and only 24 were elected to the National Assembly of 158. The NGO-CC noted that there was a problem of retaining female MPs in parliament and parties were not prepared to give more women the chance to participate. The delegation was informed that NGOs was working hard to enhance the number of women councillors. That it had trained 200 potential female councillors and 150 potential female MPs. It had also developed a retention strategy to assist women MPs retain their seats.
213. According to the NGO-CC, the electoral system seemed to be unfavourable to women. There were proposals from women to put in a

- quota for women, youth and other groups. These proposals have been put on hold pending the outcome of the National Constitutional Council (NCC).
214. The organization noted that the President has the right to nominate 8 MPs to parliament but he hardly used his prerogative to appoint women.
215. The organization further indicated that women and girls were still marginalized in Zambia, that they still walk long distances to fetch water or to go to school. The organization stated that it had been advocating for the inclusion of economic and social rights in the new constitution. It said that the network boycotted the NCC because the government indicated that the Bill of Rights (BORs) was not going to be discussed. The government had indicated that the BORs would only be discussed if the NCC decided that it be discussed.
216. The organization indicated that it had put in place support mechanisms to empower women. This included the establishment of an MP's desk in parliament which can be used by women to empower themselves with relevant information on parliament. It was noted that the women hardly use the facility. The NGO –CC also organizes workshops for women and a new programme has been introduced to attach interns to women MPs to assist them with research.
217. Those who do not make it to parliament are linked to financial institutions for assistance to help them prepare for subsequent elections. The network has also encouraged the establishment of the Female Judges Association to facilitate access of women to the justice system. Women also have problems accessing land. It was noted that the government has indicated that where there was land available for sale, 30% will be set aside for women and 70% will be competed for. The problem however was that many women do not know the procedures for acquisition of land and some find the procedures very laborious. Some cannot get credits because they are always asked for collaterals which they cannot afford.

## **Meeting with the Zambian Police Force**

218. The delegation met with the Zambian Police Force on 17 April 2008 at the Police Headquarters in Lusaka. The delegation was received by Mrs. Susan D.K. Malundu, Assistant Commissioner of Police, Deputy Director for Community Services. She was accompanied by Mr. Vincent Sabiola – Administrative Assistant, Victims Support Unit.
219. After explaining the establishment and functions of the African Commission, Commissioner Tlakula informed Mrs. Malundu of the purpose of the mission, indicating why the delegation decided to visit the police. Commissioner Tlakula indicated that as one of the main institutions of state, the police have always been accused of violating human rights and of abuse of power. She said the African Commission wanted to know the role of the Zambian police in the protection of human rights in the country, the challenges it faced and its reaction to the various accusation of police brutality, torture and abuse of power.
220. In her response, Mrs. Malundu indicated that during the one party era, that is, 1964 – 1991, there were several complaints that the police were not friendly, were brutal and uneducated. She said with the introduction of multipartism in the early 1990s, there were various reforms within the police, and it was recommended that the police are given a facelift. She added that the PPCA is a creation of this reform to ensure proper police accountability. She said the reform also introduced a Professional and Legal Standards Unit which works closely with the PPCA to improve service delivery. She said the police have also created the Community Services Division with a Family Support Unit which deals with family violence, and a Child Support Unit which looks at how crimes against children should be reported and dealt with.
221. She indicated that these reforms notwithstanding, the police also made efforts to improve its human rights record. To this end, police officers were sent for training and human rights were included in the training curriculum. University graduates were also being recruited into the police force. She said human rights and international humanitarian law were taught to police and many were sent to the International Law Enforcement Academy (ILEA) in Botswana for more training.
222. Mrs. Malundu indicated that the reintroduction of democracy and the introduction of reforms within the police force raised the public expectation on police service delivery in general and respect for human rights in particular. She said the Police still faced numerous challenges, including officers who were resistant to change, inadequate training, and lack of sensitization. This has resulted in some elements of the police still

engaging in unorthodox practices such as assaults and other forms of brutality.

223. As to whether in her view the PPCA was an effective institution, Mrs. Malundu indicated that the PPCA has no authority to dismiss officers because it is a creature of the Zambia Police Act. Asked about accusations levied by the Legal Resources foundation and other sections of civil society about lack of access to information from the Police, she indicated that the public cannot have access to any kind of information. She advised that the Public should always refer their complaints or inquiries to the right authorities, usually, the Head of the division and they should put their requests in writing or alternatively, direct them to police headquarters.
224. On crime, she indicated that there has been an increase in crime as population increased, adding that with the increase in crime, the police have become overwhelmed. She said there was no corresponding increase in resources – human resources, financial or logistical.
225. She said the police was working closely with other law enforcement agencies to deal with backlog of cases, and to that end had established the Access to Justice Programme, which included all law enforcement agencies working together.
226. In terms of workforce, there were 16, 000 officers, made up of among others, one Inspector General, 2 commissioners, 6 Deputy Commissioners, 20 Senior Assistant Commissioners and 23 assistant commissioners.
227. Asked whether there was any policy to appoint women to higher positions, she indicated that the police had adopted the national gender policy in which 30% of women have to be in high positions. She added that there was a challenge of having competent women, noting that there have been very few women in the history of the Zambian Police Force, and women were only beginning to apply to the police force. She said women were being exposed so that they would be able to handle positions of responsibility.
228. On gender violence, she said there was increasing rate of gender based violence. This is however because the police has been sensitizing people about gender based violence and the establishment of the victim's support unit. She said this increase could be attributed to increasing awareness.

229. Asked how cases of children who are victims of crime or domestic violence are dealt with, she said, there were officers trained to deal with children, including how to interview children and handle cases involving children. She noted that a female child is interviewed by a female police officer and a male child by a male officer.
230. On the accusation that detained suspects with HIV were prevented from taking their drugs, Mrs. Malundu indicated that the police have recruited HIV/AIDS Coordinators who usually visited the cells to find out if there were people who needed such assistance. She said usually, the suspect would have to ask a relative to bring the drugs, but in view of the stigma associated with the disease, some may not want to reveal their status.

### **Visit to the Kabwe Maximum Security Prison**

231. The delegation visited the Kabwe Maximum Security Prison on 17 April 2008. The delegation visited the Remandees section, the Women section and the clinic. Regrettably, the delegation was denied access to the Condemned Section as the Deputy Commissioner of Prison indicated that it was too risky to visit the section. The delegation was informed that there were 225 inmates on death row.
232. The prison environment and the cells were generally clean, but the cells were overcrowded and had very poor ventilation. The clinic was a first aid Clinic dealing with minor sickness, while serious and complicated health problems were referred taken to Kabwe Hospital. About 150 inmates were on ARVs and there was a debate on whether to give condoms to inmates. The delegation visited the Sick Bay of the prison which was generally clean.
233. The prison was constructed for 400 inmates but at the time of the mission had a total of 1,177 inmates. A cell of 5m x 11m built to hold 26 inmates was, at the time of the mission, holding about 42. Each cell had a television set.
234. The Prison provided vocational training in carpentry, upholstery and agriculture to the inmates. There was also a small library with five computers.
235. The Female Section of the prison had a total of 76 inmates, two of them on death row. It was generally cleaner than the male section. The section had only one pot and the delegation was informed by the inmates that that was not enough to prepare food for all of them. There were three children (two aged three years and one aged 8 months) who were staying their mothers in prison.

236. The Female Section of the Prison had a garden in which the inmates grew cabbage, onion, tomatoes and lettuce. The produce of the garden is sold and some used for their meal. The inmates appealed to well-wishers to provide them with boreholes.

237. The prison authorities informed the delegation that the major challenge was overcrowding and the cumbersome procurement procedures which sometimes delays the purchase of items and the provision of services to inmates. The authorities indicated that the prison was regularly visited by the NGOs, churches, the HRC, Judges, Members of Parliament and Ministers.

### **Meeting with the Law Association of Zambia (LAZ)**

238. The delegation met with the Law Association of Zambia on 18 April 2008. The delegation was received by the Vice President of LAZ, Mr. Stephen Lunga, who was in the presence of other members including, Overs Banda and Edward Sakala, Treasurer and Executive Secretary, respectively.

239. After introducing the delegation, Commissioner Tlakula informed the members of LAZ about the African Commission and the purpose of the mission to Zambia. She said the mission was a friendly visit to hold discussions with relevant human rights stakeholders in the country to find out how human rights were promoted and protected in the country, as well as examine the successes made and the difficulties encountered by these stakeholders as they exercise their different mandates in the promotion and protection of human rights.

240. In response, the delegation was informed that there were many challenges in the promotion and protection of human rights in the country. LAZ indicated that ranging from freedom of expression to the treatment of suspects by the police, there were serious improvements that needed to be made if Zambians were to be ensured effective enjoyment of their human rights.

241. On freedom of expression, LAZ indicated that over the years there had been an improvement in freedom of the press as well as access to information. It said there were serious debates on the Freedom of Expression and Information Bill advocated for by the private sector and civil society, indicating that it is hope that the Bill will enhance the enjoyment of freedom of expression.

242. LAZ indicated that there was a realization by both the government and civil society that respect for human rights was essential for national

- development. However the state institutions were not well equipped to ensure the effective enjoyment of human rights. LAZ singled out the police force as one of the institutions that seems to be failing in its responsibility. It however recognized the efforts of the Inspector General of Police for coming out strongly against human rights violations by the police, which according to LAZ seems to permeate all ranks.
243. LAZ has a firm stand on human rights and has always advocated for respect for human rights in Zambia. It has a human rights committee which monitors the human rights situation in the country. It also publishes a yearly human rights report on human rights and visits prisons. LAZ is also represented and is playing an important role in the National Constitutional Council process
244. On the death penalty, LAZ indicated that it has always advocated
245. for the abolition of the death penalty. It added that even though the death penalty was still in the laws of Zambia, the President had indicated that he will not execute any prisoner as long as he was in power. On economic and social rights, LAZ informed the delegation that economic and social rights should be part of or enshrined in the constitution.
246. The delegation was also informed that the police usually held people for unnecessarily long periods both in police cells and in prisons. On the domestication of human rights instruments, LAZ noted that the government had not taken any steps to domesticate international treaties.
247. On freedom of expression, LAZ indicated that the situation of freedom of expression in the country was still problematic. It indicated that there was still the law on defamation of the president which it sees as unnecessary in an open and democratic society.
248. On the procedure for appointment of judges and other constitutional bodies, LAZ was of the view that there wasn't enough transparency and the procedure didn't guarantee enough independence. According to LAZ, once a name has been nominated, parliament writes to a number of institutions including LAZ, to gather information about the candidate. A meeting of LAZ is called to look at the names and LAZ appears before the select-committee in parliament to brief the latter. The delegation was informed that there has been an instance where LAZ has rejected a candidate but the latter was still appointed by the President. LAZ proposed that the President should provide parliament with a number of names from which to choose from, adding that it would be much better if there were consultations before the president nominates. Once a president makes a nomination, it is more or less a rubber stamping – organizations have no option or choice of alternative candidates.

249. On the preparation and submission of State Reports, the delegation was informed that the government consults LAZ during the preparation of its reports, adding that it was consulted during the preparation of Zambia's Initial Report to the African Commission. LAZ added that, this is rarely done as the government doesn't seem to be taking its reporting obligations seriously. On shadow reporting, LAZ indicated that it does not prepare shadow reports but do make contributions to other institutions, especially those that have Observer Status before treaty monitoring bodies.

250. LAZ wanted to know how effective the African Commission was, especially with respect to the human rights situation in Zimbabwe. Commissioner Tlakula indicated that the African Commission has been working under very difficult conditions and that notwithstanding, it had made some contribution to the promotion and protection of human rights in Africa. She said that with respect to Zimbabwe, the African Commission had undertaken a fact-finding mission to the country in 2002 and had remained seized with the situation, noting that some of the concessions made in the run-up to the March 2009 elections could be attributed to the intervention of the Commission. She also indicated that the Activity Reports of the Commission were taken seriously by States.

### **Briefing meeting with the Minister of Justice**

251. Commissioner Tlakula had a meeting with the Minister of Justice on 18 April 2008 in which she briefs the Minister on the mission, including in particular the preliminary observations.

252. The Commissioner indicated to the Minister that her observations were preliminary since she still had to submit the report to the whole Commission for consideration and adoption. Thereafter the report of the mission with recommendations shall be transmitted to the government.

253. Commissioner Tlakula informed the Minister that the mission was generally successful and the delegation was able to meet with most of the people it had planned to meet with. She brought the following observations to the attention of the Minister:

- a) the serious overcrowding and high number of remandees,
- b) the large backlog in cases in most courts
- c) allegations of police brutality, torture and abuse of power that was mentioned by almost all the organizations;
- d) the ineffectiveness of the PPCA, especially with respect to the lacunae in the legislation and the inadequate funding;
- e) the increase in gender-based violence;

- f) the Electoral Commission is required to do continuous registration but has not been able to do so due to inadequate resources;
- g) The existence of the death penalty in the statute books of Zambia.
- h) That there was a tendency in most of the ministries of adopting policies but there was lack of implementation of the same;
- i) That the law school in particular and the University as a whole was hardly associated with national development issues, including government policies. There was the impression that the school of Law in particular hardly took the lead on national issues.
- j) There should be an involvement of the University. School of Law can contribute positively to human rights issues – have positions on basic/major national debates or issues.
- k) There seems to be a reactive participation on political issues. As government, if they react like this, it may not be taken seriously.

254. The Commissioner also welcomed the creation of the Access to Justice Programme, the institution of the Family Support and Child Support Units and the establishment of numerous institutions to support democracy and the enjoyment of human rights.

255. In his response, the Minister noted with respect to the death penalty that almost all the prisoners on death row had their sentences commuted to life sentence, over 900 prisoners were pardoned – either released or have sentences reduced. He said this was a major step towards decongesting the prisons and dealing with those on death row. He said the Constitution review exercise was going on and the death penalty was on the agenda, noting that public opinion seems to be in favor of retaining the death penalty.

256. The Minister said he had noted the observations of the Commissioner and the government would be waiting for the report and recommendations of the Commission.

### **Observations and analysis of the human rights situation in Zambia**

257. The mission of the African Commission lasted five days and within those days the delegation of the African Commission was able to meet a cross section of relevant actors working in the field of human rights in the country. The African Commission is satisfied that the individuals and institutions met and the frank discussions that emanated from those discussions have given it a bird's eye view of the human rights situation in the country.

258. From the meetings held and the discussions, the African Commission had the opportunity to appreciate the human rights situation of the country. The Commission in this section of the report will analyse

the human rights situation in Zambia and make observations based on the meetings and discussions it had with the different stakeholders. The analysis will be made under the following headings:

- a) prisons and conditions of detention,
- b) provision of resources to state organs/institutions,
- c) the role of the police force in human rights promotion and protection,
- d) the situation of freedom of expression,
- e) the justiciability of economic and social rights
- f) the human rights situation of women,
- g) Zambia's international human rights obligations,
- h) Participation at the sessions of the African Commission by the government, NGOs and the Human Rights Commission.

### **Prisons and conditions of detention**

259. The delegation of the African Commission visited only one prison during the mission that is the Kabwe Maximum Prison. This is one of the largest prisons in the country and is the prison headquarters in Zambia where the Commissioner of prison and other senior prison officials have their offices. The delegation met with the deputy Commissioner of prison who briefed it on the prison condition and accompanied it to a visit of the cells and other facilities. The African Commission can conclude that the condition of the Kabwe Maximum Prison to a large extent exemplifies the prison condition of the country as a whole.

260. Although the environment looked generally clean, the prisoners looked very dirty and pale. They moved around aimlessly as there were no vocational or recreational activities to keep them busy. There are no schools or measures to encourage those who want to continue their education from prison. The delegation was denied access to the section holding those sentenced to death. The reason given was that visitors are not allowed to see them. The cells were overcrowded and lacked proper ventilation which may explain stuffy smell one gets when one enters the cells. Except in the female section, the prisoners did not have beds and were thus sleeping on mattresses spread on the floor. The cells have no toilets inside so the prisoners use a bucket to relieve themselves at night.

261. The conditions of detention in the Kabwe Maximum Prison, in the opinion of the African Commission, fall short of the international standard of protection accorded to persons deprived of their liberty.

## **Funding for state organs/institutions**

262. The African Commission appreciates the government's decision to establish independent institutions, such as courts, the Human Rights Commission, the Electoral Commission, the PPCA to promote the rule of law, strengthen democracy and ensure respect for human rights.
263. Apart from the Human Rights Commission and the JCA that informed the Commission that they were comfortable with the funding they received from government, the other institutions visited indicated their one of their major challenge was inadequate resources. The PPCA and the Electoral Commission seem to be the worst hit. The PPCA for example has no staff of its own. The staff members are all seconded from different government departments, its budget is never adequate to recruit staff and pay for investigations. The Electoral Commission has been unable to undertake continuous registration of voters due to lack of resources and it is operating with two members yet to be appointed. Research and other activities planned by the Commission cannot be undertaken due to inadequate resources – human and financial. Similar challenges were expressed by some government departments visited, notably, the department of child development and the division of Gender in Development. The inadequate resources to public institutions have resulted in most, if not all of them working under difficult conditions and compromising their effectiveness, and to some extent their independence.

## **The role of the police force in human rights promotion and protection**

264. The police are one of the most important institutions in the protection of human rights. The police are established to among other things, provide protection for persons and property, prevent the commission of crime, etc.
265. During the mission, the African Commission observed that there was seeming lack of public confidence in the police. Almost all the civil society organizations contacted expressed dissatisfaction with the performance of the police. Charges of police brutality, torture and abuse of power were leveled against the police. There seemed to be very little cooperation between the police and other human rights stakeholders and other law enforcement agencies. Even though there was a police oversight body established, that is the PPCA, it was clear that the latter has had little or no impact on the police. The Police itself don't seem to think the PPCA is working and there is little cooperation between the two.
266. The PPCA is completely undermined and has been unable to make any impact in monitoring the activities of the police.

### **The situation of freedom of expression**

267. The right to free of expression in Zambia is generally observed and there were no complaints of harassment or intimidation of journalists or the press, or closure of newspapers. However, there seemed to be challenges with respect to access to information and the converting the state-owned media to a public broadcaster.
268. A draft law on Freedom of Expression and Access to Information has been with the government for over two years and was yet to be submitted to parliament for consideration. There was consensus from all the stakeholders spoken to that the main contentious issues had been dealt with and was hopeful the bill will be tabled to the next session of Parliament. The Legal Counsel of Parliament informed the Commission that once tabled; the bill will be adopted within weeks.
269. The government claims that the delay in adopting a law on access to information was in a bid to ensure a balance between access to information and the misuse of information, especially for harmful practices such as terrorism.
270. With respect to the state-owned media, the African Commission observed that there was reluctance on the part of government to convert state-owned broadcasters to public broadcasters. There are still laws that are restrictive to the effective enjoyment of the right to freedom of expression, in particular, the law on defamation.

### **The justiciability of economic and social rights**

271. Economic and social rights are not justiciable in Zambia. They are contained in the Constitution under section ... dealing with Directive Principles of State Policy which serve as a guide to the State and remain as mere aspirations.
272. There seems to be resistance by the State to include economic and social rights in the bill of rights. Almost all the organizations spoken to during the mission were in favor of including economic and social rights as justiciable. Some NGOs had boycotted the National Constitutional Council because of the government's refusal to include economic and social rights on the agenda. As a compromise, the government has allowed the NCC to decide whether or not the matter should be included in the bill of rights.
273. The very strong views expressed by NGOs indicate the importance that individuals, NGOs and communities place on economic and social rights. It was the observation that the majority of the organizations spoken

to were in favor of including economic and social rights in the bill of rights. Most of these institutions believe there was no reason for the government to be scared as the justiciability of these rights does not necessarily call for an influx of litigation against the state, but rather gives the opportunity to make appropriate plans towards the realization of these rights. There is no indication that those countries that have included economic and social rights in their bills of rights have been overwhelmed by court actions. Rather, it can be observed that they have taken steps to meet the minimum core content of such rights, and by so doing, given persons within their jurisdiction, the opportunity to enjoy those rights.

### **The human rights situation of women**

274. The Commission observed that the human rights situation of women in Zambia has generally improved. There were policies and laws put in place to deal with exploitation and violence against women. This notwithstanding, there were still serious challenges posed by culture, customary practices, particularly in relation to ownership of land by women and the effects of poverty. Women are still poorly represented in decision making levels both in public and private sectors. There were still reports of property grabbing from widows as well as cleansing rituals which are harmful to the woman.

### **Zambia's international human rights obligations**

275. Zambia has ratified all the major international and regional human rights instruments and over the past few years have taken measures to submit its periodic reports to various treaty bodies, including the submission and presentation of its initial report to the African Commission in conformity with Article 62 of the African Charter, during the 41<sup>st</sup> Ordinary Session of the Commission in May 2007. There is a desire within government to meet its international human rights obligations. However, due to inadequate resources and lack of proper coordination by the various state departments, it has not been possible to meet these responsibilities regularly.

276. The Commission observed that in spite having adopted the Charter in 1992, Zambia has not domesticated its provision. The Bill of Rights contains some but not all of the provisions of the Charter. The domestication of the Charter would give persons within the jurisdiction of Zambia a broader array of rights and an opportunity to hold the government accountable for those rights.

277. The Commission also observed that the government of Zambia has not been attending the sessions of the African Commission regularly and neither have NGOs and the Human Rights Commission of Zambia. This

absence has made it difficult for the Commission to meaningfully engage with the Republic of Zambia in the promotion of human rights in the country. The NGOs in Zambia have not been able to benefit from the experience sharing with other NGOs that attend the sessions of the Commission and the NGO Forum that proceeds the Commission's sessions.

### **Other observations**

278. The Commission also observed that there was willingness within government to abolish the death penalty or at least adopt a permanent moratorium on the death penalty. The government however intends to undertake further research and consultations with the public on the matter. It seems however that the majority of the public may be against the abolition of the death penalty.

### **Conclusions**

279. Meetings and discussions with the various stakeholders, including government departments, the Human Rights Commission, NGOs and faith based organization gave the Commission an opportunity to examine the successes, explore the challenges and consider ways and means of enhancing the enjoyment of human rights in Zambia. Given the time constraints, the Commission could not meet with all the stakeholders it would have liked to meet. However, the African Commission is convinced that the persons and institutions met and the frank discussions that emanated therefore have given it an opportunity to have a better understanding of the human rights situation in the country. The Commission is convinced that the information it has gathered provides a representative picture of the human rights situation in the country and the basis on which the Commission can make an informed opinion and formulate appropriate recommendations.

280. The Commission observed that generally, there has been some improvement in the promotion and protection of human rights in the country since its last mission in 2002. There have been commendable efforts to address problems of violence against women and the girl child, the dispossession of widows, liberalization of the media and on freedom of the press and expression.

281. The Commission however noted that most of the recommendations made after the last mission had not been implemented. One of the issues that were raised during the 2002 mission was the violation of human rights by the police force. During two mission matter this featured prominently in the discussions that the delegations had with various interest groups. It is clear that the Zambia Police Force still has several challenges it has to

overcome to be able to ensure the effective protection of the human rights of the Zambian people. Several allegations of excessive use of force, abuse of power, reports of rape and deaths in police custody were received from members of civil society. The mechanisms that have been put in place to deal with human rights violations by the police such as the PPCA and the professional and legal standard unit do not seem to be effective.

282. The debate regarding the incorporating of economic and social rights into the bill of rights leads the Commission to once again reiterates its believe in the indivisibility of human rights. There is the realisation that the enjoyment of civil and political rights is conditioned on the effective enjoyment of economic and social rights.

283. It is realized that Zambia is a developing country and may not have the resources to create the necessary infrastructure and environment to ensure the effective enjoyment of economic and social rights. However, it must be noted that States are expected not to simply lay back and complain about lack of resources, but to take steps to ensure the progressive realization of these rights, through the provision of the minimum core content of the rights.

### **Recommendations**

284. In making the recommendations below, the African Commission is cognizant of the socio economic development of Zambia, but at the same time is conscious of the indivisibility of human rights. The Commission is firmly convinced that the respect for all human rights provides the foundation for any meaningful political and economic development.

285. Based on the above analysis, the African Commission makes the following recommendations:

- a) The Police Act (1999) should be amended to allow the PPCA to make recommendations directly to the PPC and for the latter to act on the recommendations;
- b) The members of the PPCA and other constitutional and other independent bodies should be appointed through an open, transparent and more competitive parliamentary process (preferably through a public nomination). They should have security of tenure to guarantee their independence.

- c) The financial and human resources capacity of independent bodies such as the PPCA and the Electoral Commission should be greatly improved;
- d) Civil society organizations and other relevant stakeholders should cooperate with the PPCA to ensure the effective discharge of its mandate;
- e) The police and the PPCA should work closely to enhance the promotion and protection of human rights;
- f) The procedure for appointment of judges should be open and transparent and the body responsible for the selection and appointment of judges should include some judges;
- g) The immigration authorities should treat migrants with dignity during the course of deportation;
- h) The death penalty should be abolished;
- i) The government should take urgent steps to adopt the draft Bill on Freedom of Expression and Access to Information;
- j) Urges government to transform state-owned broadcasters into public broadcasters in a bid to give greater access to members of the public;
- k) Call on the law enforcement agencies, in particular, the police, the judiciary and the prison service to work closely to deal with the serious problem of overcrowding in prisons;
- l) To consider adopting non-custodial punishments such as community services and fines especially for minor crimes and petty offences;
- m) The government should consider including socio-economic rights as justiciable rights in the Constitution being reviewed;
- n) The government should abolish and take steps to discourage customary practices that discriminate against women such as property grabbing and the inheritance of women;
- o) Labour laws should be adopted where they do not exist and implemented where they exist, to deal with discrimination of HIV/AIDS patients in the workplace as well as poor labour practices;
- p) The Legal Aid system should be made more effective to be beneficial to indigenes;

- q) The government should expedite payment of damages made by the Courts;
- r) The University of Zambia should examine the role it can play in the promotion and protection of human rights in the country; and
- s) The government should investigate allegations of deaths and rapes in police custody.